Supreme Court, U.S.
FILED

(2)

Number: 94 803 OCT 27 1994

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1994

Leslie E. Knighten, Petitioner

Versus

Cave And McKay, Attorneys At Law, Et Al., Donald G. Cave, John F. McKay, Craig S. Watson, Unknown Corporation and\or Corporations and Unknown Indemnity Company, Respondents

---

ON PETITION FOR WRIT OF CERTIORARI TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI

Leslie E. Knighten, Pro Se
Post Office Box 526
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59pp

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UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JUL 29 1994
CHARLES R.FULBRUGE III,
CLERK

No. 92-3804
Summary Calendar

LESLIE E. KNIGHTEN,
Plaintiff-Appellant,

versus

CAVE & MCKAY, Attorneys
at Law, ET AL.
Defendants-Appellees

Appeal from the United States District Court For the Middle District of Louisiana (CA-91-1063-A-M1)

Before GARWOOD, SMITH and DEMOSS, Circuit Judges

J U D G M E N T

This cause came on to be heard on the record on appeal and was taken under submission on the brief on file.

ON CONSIDERATION WHEREOF, It is now ordered and adjudged by this Court that the judgment of the District Court in this cause is affirmed.

IT IS FURTHER ORDERED that plaintiff-appellant pay to defendants-appellees the cost on appeal to be taxed by the Clerk of this Court.

July 29, 1994

ISSUED AS MANDATE: AUG 22 1994

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JUL 29 1994
CHARLES R.FULBRUGE III,
CLERK

No. 92-3804
Summary Calendar

LESLIE E. KNIGHTEN,
Plaintiff-Appellant,

versus

CAVE & MCKAY, Attorneys
at Law, ET AL.
Defendants-Appellees

Appeal from the United States District Court For the Middle District of Louisiana (CA-91-1063-A-M1)

Before GARWOOD, SMITH and DEMOSS, Circuit Judges:*

Plaintiff-appellant Leslie E. Knighten (Appellant), a citizen of

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expenses on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

"s/ WG, JS, HRD".

Mississippi, brought a pro se action under Title 42 U.S.C. §§1981, 1983, and 1985 against defendants-appellees, citizens of Louisiana, Cave & McKay, John F. McKay, Donald G. Cave, and Craig S. Watson (collectively Appellees), seeking over $3,000,000 damages for alleged violation of his constitutional rights for legal services they performed for him in a personal injury lawsuit. Appellant later amended his complaint to convert the civil rights claims into allegations of malpractice. The district court granted summary judgment in favor of Appellees and sanctioned Appellant $1,500 under Rule 11 for bringing a frivolous civil rights action. Appellant now appeals both the grant of summary judgment and the Rule 11 sanctions. We Affirm.

Facts and Proceedings Below

Appellant was injured on March, 30, 1985, while working as an electrician for

Todd Electric in Baton Rouge, Louisiana. Shortly thereafter, he employed the law firm of Cave & McKay to represent him in a Louisiana state court action for personal injury and intentional tort against Todd Electric, Sears Roebuck & Company (Sears), and several other defendants. On November 26, 1986, the state ruled that his recovery against Todd Electric was limited to worker's compensation benefits because his injury did not result from any intentional tort on the part of his employer. The court dismissed his suit against Todd Electric but reserved his right to proceed against Sears and the remaining defendants. An appellant court affirmed this decision, and on March 18, 1988, the Louisiana Supreme Court denied certiorari.

On February 20, 1989, Appellant terminated the legal services of Cave & McKay and two weeks later filed a state

court action against the firm for malpractice. On June 6, 1989, however, Appellant voluntarily dismissed that suit and immediately rehired the firm to continue his suit against Sears. Appellant became increasingly dissatisfied with the handling of the suit against Sears and once again discharged the firm. On November 20, 1991, he filed the present federal court action asserting numerous civil rights violations for Appellees' failure to adequately protect his legal rights regarding the Todd Electric litigation. At a status conference on February 27, 1992, a magistrate judge warned Appellant that filing such frivolous civil rights claims would incur sanctions under Rule 11, FED.R.CIV.P. On March 27, 1992, Appellant amended his complaint to include claims of legal malpractice and to delete the civil rights

claims.[1] On June 25, 1992, the district court granted summary judgment in favor of Appellees and sanctioned Appellant $1,500. Appellant now appeals both the grant of summary judgment and the award of Rule 11 sanctions. Appellees seek additional damages under Rule 38, FED.R.APP.P., for having to defend against a frivolous appeal. We affirm the district court's grant of summary judgment and imposition of Rule 11 sanctions, but deny Appellees' request for Rule 38 sanctions.

Discussion

I. Prescription of Malpractice Claim

This Court reviews a grant of summary judgement de novo. Exxon Corporation v. Burglin. 4 F.3d. 1294, 1297 (5th Cir. 1993). Summary Judgment is only

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[1] Appellant's amended complaint, however, retained its original reference to 28 U.S.C. §1343 (original jurisdiction over civil rights claims). Jurisdiction was also asserted under 28 U.S.C. §1332 (diversity).

appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." FED.R.CIV.P. 56(c). As the party moving for summary judgment, Appellees carry the initial burden of pointing out the respects in which there is an absence of evidence to support the nonmovant's case. Burglin, 4 F.3rd at 1297; Celotex Corp. v. Catrell, 477 U.S. 317, 325, 106 S.Ct. 2548, 2553 (1986). After consulting the applicable substantive law to determine what facts and issues are material, we review the evidence in a light most favorable to the nonmovant to determine if any triable issues of fact exist. Burglin, 4 F.3rd at 1297.

The district court dismissed the claims of legal malpractice as being time barred. Louisiana generally applies a one-year prescriptive period to claims of

legal malpractice. Lima v. Schmidt, 595 So.2d 624, 628 (La. 1992); LA. CIV. CODE ANN. art. 3492 (West 1992). The state recognizes two exceptions to this general rule: (1) where the attorneys expressly warrants a specific result and fails to obtain that result, and (2) where the attorneys agrees to perform certain work and does nothing whatsoever. See Lima, 595 So.2d at 628 n.2. Neither of these situations applies in the present case. Appellant has made no allegation that Cave & McKay warranted any particular result, and the record clearly indicates that the law firm did as least do some work on the case including filing the original complaint and beginning discovery. Thus, the one-year prescriptive period began to run no later than March 18, 1988, when the Louisiana Supreme Court declined to review

Appellant's case against Todd Electric.[2] Filing the initial state court acted to toll the statue of limitations while the suit was pending, LA. CIV. CODE ANN. art. 3463 (West 1993); however, prescription began to run anew from the date of the voluntary dismissal of the suit on July 6, 1989. Because Appellant did not file the present federal court action until November 20, 1991, the prescriptive period had expired and his suit appears time barred.

Where, as here, the plaintiff's complaint on its face reveals that prescription has run, "the burden in on the plaintiff to show why the claim has not prescribed." Lima, 595 So.2d at 628.

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[2] Appellant has failed to argue any malpractice claim against Cave & McKay regarding his suit against Sears and the other defendants or his unrelated slander suit against Dr. Wilkerson. Thus, both claims are considered abandoned on appeal.

Appellant argues that we should apply the doctrine of contra non valentem non currit praescriptio, meaning that prescription does not run against a person who could not bring his suit. Id. at 629. This doctrine tolls the statute of limitations for malpractice in certain situations where the attorneys fraudulently conceals his fault, remains silent while the prescriptive period expires, or otherwise deliberately prevents his client from discovering a cause of action for malpractice.[3] Id. The present case does not

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[3] Louisiana courts also recognize the similar doctrine of "continuous representation." *Lima*, 595 So. at 630. Under this doctrine, prescription is "suspended during the attorney's continuous representation of this client regarding the specific subject matter in which the alleged wrongful act or omission occurred." *Id.* (citation omitted). In the present case, Appellees continued to represent Knighten regarding his claim against the remaining defendants until November 1991, but they did not represent him regarding the Todd Electric litigation beyond the Louisiana Supreme Court's denial of certiorari on March 18, 1988.

involve any such activity. Appellant is charged with knowledge of law pertaining to his claim, including the applicable statutes of limitations. He was aware of all necessary facts giving rise to his malpractice claim, if any such claim existed, as of the filing of his state court action against his attorneys in February 1989--more than two and one-half years before he filed the present federal court action. As appellant has offered no summary judgment evidence nor alleged any specific facts that would contradict this finding, we conclude that he failed to carry his burden of proving that his claim is not prescribed, and thus, summary judgment was appropriate.

Appellant also argues that he was denied due process because the district court did not allow him to propound

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Thus, continuous representation is inapplicable.

discovery before granting defendants' motion for summary judgment. However, a party seeking additional discovery

> "must show the additional discovery will defeat the summary judgment, that is, will create a genuine dispute as to a material fact, and 'may not simply rely on vague assertions that additional discovery will produce needed, but unspecified facts.'" International Shortstop, Inc. v. Rally's Inc., 939 F.2d 1257, 1267 (5th Cir. 1991), cert. denied, 112 S.Ct. 936 (1992) (Citation Omitted).

If the district court determines that addition discovery is unlikely to generate evidence pertaining to the motion for summary judgment, "the district court may, in its discretion, proceed to rule on the motion without further ado." Id. Appellant makes and made no attempt to explain what facts he hopes to uncover that might affect prescription. Therefore, the district court acted within its discretion in disposing of the matter without permitting irrelevant and unnecessary

discovery.

II. Rule 11 Sanctions

Appellees sought sanctions against Appellant for bringing an "unquestionably frivolous" civil rights action and for pursuing a malpractice claim that had clearly prescribed. The district court sanctioned Appellant $1,500 to partially defray Appellees' expenses of defending the frivolous civil rights claim. We review a sanction by the district court only for an abuse of discretion. Thomas v. Capital Security Services, Inc., 836 F.2d 866, 873 (5th Cir. 1988) (en banc). While the district court is obliged to construe pro se pleadings liberally, it is not required to condone blatantly frivolous, vexatious, or harassing conduct. See Mayfield v. Klevenhagen, 941 F.2d 346, 348 (5th Cir. 1991) ("Although pro se litigants are given considerable latitude, Mayfield has consumed his portion of the

court's patience and then some. . . . His wasting of increasingly scarce judicial resources must be brought to an end."). On the contrary, Rule 11 as then in force mandated that such activity be punished regardless of its source, and Congress specifically amended the rule in 1983 to include pro se litigants. See William W. Schwarzer, Sanctions Under the New Rule 11-A Closer Look, 104 F.R.D. 181, 184 (1985). By signing the original pleading, Appellant certified that, after making a "reasonable inquiry," he believed "the matter in his complaint were well-grounded in fact and warranted by existing law." Mayfield, 941 F.2d at 348. The objective aspect of the "reasonable inquiry" dictates that a party electing to represent himself in court bears the burden of reading and understanding the applicable law. Cf. Thomas, 836 F.2d at 873 ("Rule 11 compliance is now measured

by an objective, not subjective, standard of reasonableness under the circumstances.").

Appellant argues that he effectively abandoned these claims by amending his complaint and deleting all references to Title 42. The district court was not persuaded,[4] and neither are we. First, both the original intent and the plain language of Rule 11 require the reviewing Court to consider the litigant's conduct at the time each pleading is signed. Thomas, 836 F.2d at 874. "Like a snapshot, Rule 11 review focuses upon the instant when the picture is taken--when the signature is placed on the document." Id. Under Rule 11

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[4] The district court stated:

"Plaintiff has apparently attempted to abandon the civil rights claims by calling them 'moot' in the amended complaint in a belated move at correction. The court has, however, been required to pass upon those claims because of the ineptness of the amended complaint."

as then in force, subsequently amending one's lessened the severity of the "appropriate sanction" but did not eliminate the original violation. Id. at 875 (Rule 11 applies to each and ever paper signed during the course of the proceeding and requires that each filing reflect a reasonable inquiry".) Secondly, any "reasonable inquiry" would reveal Appellant's civil rights claims to be patently frivolous. He had entered into a private employment contract with a private law firm. No Section 1983 claim ever arose because no state action was ever involved. Section 1981, while not requiring state action, only guarantees the right "to make and enforce contracts . . . as is enjoyed by white citizens." 42 U.S.C. § 1981. No matter how liberally we construe his complaint, we cannot conceive of how Appellant, a white male, might have been deprived of this right by his law firm,

consisting of white males, simply because the firm failed to recover as much money as he felt he deserved. Finally, Appellant's amended complaint, ostensibly intended to retract the civil rights claims, seems to insist that such claims are proper and that the district court erred in denying them,[5] as if attempting to evade the magistrate's threat of sanctions while encouraging this Court to bestow damages for those very same claims.[6]

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[5] On appeal, Appellant insists that he has a right to enforce contracts, and that the district court committed "unlawful racial discrimination" by refusing to allow a white plaintiff to bring a section 1981 claim against a white defendant when an African-American plaintiff might be allowed to bring such a claim. This meritless argument ignores the plain language of section 1981 and merely serves to demonstrate Appellant's reluctance to abandon these claims.

[6] For instance, the amended complaint suggests that, "in the event the Plaintiff['s] claim . . . is insufficient to suffice for a cause of action of negligence and/or legal malpractice," the court should grant damages under any other unidentified statute not listed in the

We recognize that Appellant is a pro se litigant and that he has as least made a belated attempt to correct his errors; however, we are not willing to infringe upon the district court's discretion in these matters. We are not asked to decide "whether this Court, in its own judgment and as an original matter, would have imposed any of these sanctions," but rather "whether the district court abused its discretion in doing so." Topalian v. Ehrman, 3 F.2d 931, 934 (5th Cir. 1993) (citing National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 642, 96 S.Ct. 2778, 2780 (1976). Due to the obvious frivolity of the civil rights claims and Appellant's unwillingness to abandon them, we conclude the court acted within its discretion and accordingly affirm its imposition of sanctions.

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complaint which "enables Plaintiff a cause of action against Defendants Cave & McKay . . . ."

III. Rule 38 Sanctions

Finally, the defendants argue that they are entitled to damages in the amount of $5,000 under Rule 38, FED.R.APP.P. Rule 38 permits an appellant court to award damages to the appellee if the court determines the appeal is frivolous. "An appeal is frivolous if the result is obvious or the arguments of error are wholly without merit." Coghlan v. Starkey, 852 F. 2d 806, 811 (5th Cir. 1988). While we find the present appeal meritless, we do not consider it so unreasonable as to warrant additional sanctions. The courts have shown a particular reluctance to impose sanctions under Rule 38 when the appeal challenges a finding that is not mandatory, such as an abuse of discretion. See id. at 811 n.8. Thus, we conclude that Rule 38 sanctions would be inappropriate.

Conclusion

Accordingly, the district court's

grant of summary judgment and imposition of Rule 11 sanctions are AFFIRMED, and the defendants' motion for Rule 38 sanctions is Denied.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 Sept 1 PM 3:10
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE M. KNIGHTEN

versus

CAVE & MCKAY, ET AL

AMENDED JUDGMENT

For the written reasons assigned and filed herein:

IT IS ORDERED that the judgment entered herein on June 25, 1992 is hereby amended to reflect that defendants' motion for sanctions is granted, and plaintiff shall pay defendants the sum of $1,500.00 within 15 days of the date of this judgment.

Baton Rouge, Louisiana, September 1, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

APPENDIX C-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 Aug 21 PM 2:11
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE M. KNIGHTEN

VERSUS

CAVE & MCKAY, ET AL

RULINGS ON MOTION
FOR NEW TRIAL

This matter is before the court on a timely motion by plaintiff for a new trial. No opposition has been filed. There is no need for oral argument. Jurisdiction was based on diversity as well as the civil rights claims. Plaintiff is domiciled in Mississippi.

A motion for new trial in a nonjury action must be based upon manifest error of law or mistake of fact. 11 C. Wright & A. Miller, Federal Practice and Procedure:

Civil §2804. A judgment should not be set aside except for substantial reason. Id.

Plaintiff has failed to show and substantial reason for setting aside the judgment.

Accordingly, the motion by plaintiff for new trial is hereby DENIED.

Defendants have filed a second motion, presently noticed for December 18, 1992, seeking the imposition of additional sanctions against plaintiff based on his filing the motion for new trial. The second motion for sanctions is hereby DENIED.

The Clerk shall prepare an amended judgment which incorporates the original sanctions imposed by the court in its ruling dated June 23, 1992.

Baton Rouge, Louisiana, August 21, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

APPENDIX D-2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 June 25 AM 10:32
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN

VERSUS

CAVE AND MCKAY, ET AL

J U D G M E N T

For the written reasons assigned and filed herein:

IT IS ORDERED ADJUDGED AND DECREED that the motion for summary judgment filed on behalf of defendants is hereby GRANTED and this action is hereby DISMISSED.

Baton Rouge, Louisiana, June 25, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 June 23 PM 4:45
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN,

VERSUS

CAVE & MCKAY, ET AL

RULINGS ON MOTION

This matter is before the court on motions by all defendants for summary judgment and/or motion to dismiss, and a motion for sanctions. An opposition has been filed. There is no need for oral argument. Jurisdiction is allegedly based on 28 U.S.C. §1332, diversity of citizenship, and 42 U.S.C. §§1991, 1983 and 1985.

Defendants argue that any claims for legal malpractice have prescribed and the

claims under Title 42 are without merit.

Essentially the facts are that plaintiff, a white male, was injured in the course and scope of his employment with Todd Electrical Company. He contracted with Craig Watson, attorney with the law firm of Cave and McKay, to sue his employer in tort for the injuries he received as a result of an electrical shock. Plaintiff's law suit against his employer was dismissed by summary judgment. Plaintiff's motion for new trial and his appeal to the First Circuit were both denied, as was his writ of review to the Louisiana Supreme Court.

TITLE 42 CLAIMS

Plaintiff seeks to recover damages under 42 U.S.C. §§1981, 1983 & 1985, however his claims are extremely nebulous. In plaintiff's memorandum in opposition, he states that his claims under Title 42 are "moot" in light of his amended

complaint. Be that as it may, his claim under §1981 will not survive summary judgment because even though no showing of state action is required, a showing of racial discrimination in the making or enforcing of contracts is required. Plaintiff has failed to state in his complaint or amended complaint any facts that would indicate to this court that he was discriminated against in conjunction with his contract with defendants. Plaintiff's §1983 claim must also fall because the defendants are a private law firm and to state a cause of action under §1983, plaintiff must allege that discrimination resulted by one acting under the color of state law. Since no state actor is involved, this claim too must fall. Finally, for plaintiff's §1985 claim to survive, he must prove a class-based invidious discriminatory animus. After a through review of the submitted

complaints, the court cannot find even a trace of any type of class based discrimination. Without this, plaintiff's burden has not been met and this claim must be dismissed.

With all of plaintiff's Title 42 claims failing to survive summary judgment, the only remaining basis for subject matter jurisdiction is diversity of citizenship.

MALPRACTICE CLAIMS

Plaintiff also claims that the legal representation provided by defendants in the action against the employer constituted negligence, legal malpractice and precipitated his damages. He further asserts, in brief, that even though defendants were not under contract to litigate against a Dr. Wilkerson on his behalf, their refusal to timely turn over certain necessary requested documents allowed prescription to run on a suit he

had filed in Mississippi on January 17, 1992. This claim is entirely unrelated to the malpractice claim and is not alleged in either the original or amended complaint (or at least the complaint is so vague that the claim cannot be identified).

Defendants argue that any legal malpractice claim that may be available to plaintiff from the action against the employer has long since prescribed, and that plaintiff never contracted with Cave and McKay to bring any action against Dr. Wilkerson for which a charge of malpractice could be lodged.

In **Lima v. Schmidt**, 595 F.2d 624 (La. 1992), the Supreme Court recently held that normally, legal malpractice suits are governed by the one year prescription for delictual actions under LSA-C.C. 3492. This, however is not without exception; if an attorney guarantees a result or

performs no work at all, he may be subject to an action under contract law and governed by the ten year prescriptive period under LSA-C.C. 3499.

Consequently, plaintiff's malpractice claims have prescribed unless he can allege and support facts that will allow his claims to fall within the exception and trigger the ten year prescriptive period set forth. **Lima, supra.** Both Knighten's complaint and amended complaint make vague attempts at characterizing the action or lack of action by defendants in their legal representation provided, but the allegations are clearly not sufficient to plead the exception set forth above. Since the undisputed facts clearly establish that prescription has run as to the action against the employer, summary judgment is appropriate as to that claim.

Knighten also attempts to expand his allegations through his memorandum in

opposition by further expounding upon the allegations surrounding Dr. Wilkerson, but the memorandum is not the complaint.

As to the claim involving the otherwise unidentified Dr. Wilkerson, plaintiff's pleadings are incomprehensible and that claim also falls.

Sanctions

Defendants seek sanctions, alleging that plaintiff has filed claims under Title 42 which are unquestionably frivolous and without merit and has pursued a malpractice claim that defendants argue has clearly prescribed.

Plaintiff has apparently attempted to abandon the civil rights claims by calling them "moot" in the amended complaint in a belated move at correction. The court has, however, been required to pass upon claims because of the ineptness of the amended complaint. Pro se litigants are as much subject to Rule 11 Fed.R.Civ.P. as are

lawyers. Every signature on a pleading "constitutes a certificate by the signer that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law . . . " A person who elects to represent himself in court bears the burden of reading and understanding applicable law. The law applicable to federal civil rights claims, such as are attempted to be asserted here, is well established and absolutely clear. The claims are clearly non-meritorious and frivolous and including them in the original complaint constituted a violation of Rule 11.

Rule 11 mandates a sanction for every violation (the court "shall impose . . . an appropriate sanction "). In this case, the court determines that payment by plaintiff to defendants of the sum of $1,500, in partial defrayment of the

expenses of defending the frivolous civil rights claims, is appropriate.

Accordingly, the motion of defendants for summary judgment is hereby GRANTED, and this action shall be dismissed.

IT IS FURTHER ORDERED that within fifteen (15) days of the date of the judgment in this mater, plaintiff shall pay to defendants the sum of $1,500. Defendants shall file proof of such payment in this record.

Baton Rouge, Louisiana, June 23, 1992.

"s/John V Parker"
JOHN V. PARKER, CHIEF JUDGE
MIDDLE DISTRICT OF LOUISIANA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 June 18 PM 2:21
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN, Plaintiff

VERSUS

CAVE AND MCKAY, ATTORNEYS AT LAW, ET AL., DONALD G. CAVE, JOHN F. MCKAY, CRAIG S. WATSON, UNKNOWN CORPORATION AND\OR CORPORATIONS AND UNKNOWN INDEMNITY COMPANY, Defendants

ORDER

THIS CAUSE having come on by Plaintiff's Motion For Continuance and the Court finds that Plaintiff's Motion is well taken and is here ~~granted~~ DENIED.

IT IS THEREFORE ORDERED that the Plaintiff cause is continued until such time that discovery has been propound; ALTERNATIVELY, IT IS THEREFORE ORDERED that the Plaintiff have an additional ___

days in which to appear before this Court and said time beginning to run from the _____, day of _____, 1992.

SO ORDERED, this the 10th day June, 1992.

"s/John V Parker"
U.S. DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 March 31 AM 10:49
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN, Plaintiff

versus

CAVE AND MCKAY, ATTORNEYS AT LAW, ET AL., DONALD G. CAVE, JOHN F. MCKAY, CRAIG S. WATSON, UNKNOWN CORPORATION AND\OR CORPORATIONS AND UNKNOWN INDEMNITY COMPANY, Defendants

ORDER

THIS CAUSE having come on by Plaintiff's Motion For Leave To Amend Complaint and the Court finds that Plaintiff's Motion is well taken and is hereby granted.

SO ORDERED, this the 30th day of March, 1992.

"s/ Stephen C. Riedlinger "
UNITED STATES MAGISTRATE JUDGE

APPENDIX H-1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FILED
U.S. DIST. COURT
MIDDLE DIST. OF LA.
1992 March 3 AM 11:18
LEE DUPUIS, CLERK

CIVIL ACTION
No. 91-1063-A

LESLIE E. KNIGHTEN,

VERSUS

CAVE & MCKAY, ET AL.

SCHEDULING ORDER

A status conference was held on February 27, 1992.

PRESENT: Leslie E. Knighten
In proper person

Craig Watson
Greg Beard
Attorney for defendants

Plaintiff was reminded of the requirements of Rule 11 regarding his claims brought pursuant to 42 U.S.C. §§1981, 1983 and 1985. Plaintiff advised that he intends to move to amend his

complaint to specifically allege a legal malpractice claim and will propound discovery request.

Plaintiff shall propound his written discovery request and move to amend the complaint by March 27, 1992.

Defendants shall file their dispositive motions regarding the plaintiff's claims under sections 1981, 1983 and 1985 by May 15, 1992. Defendants may include in their dispositive motion any other claims made by the complaint.

Baton Rouge, Louisiana, March 3, 1992.

"s/ Stephen C. Riedlinger "
UNITED STATES MAGISTRATE JUDGE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S.COURT OF APPEALS
FILED
JUL 29 1994
CHARLES R.FULBRUGE III,
CLERK

No. 92-3804

LESLIE E. KNIGHTEN,
Plaintiff-Appellant,

versus

CAVE & MCKAY, Attorneys
at Law, ET AL.,
Defendants-Appellees

Appeal from the United States District Court For the Middle District of Louisiana

ORDER:

IT IS ORDERED that appellant's motions to strike appellees' brief and appendices and\or similar motion is Denied

"s/ Will Garwood"
WILL GARWOOD
UNITED STATES CIRCUIT JUDGE

19TH JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

FILED
JUL 8 1989 AM 11:17

NO. 340,380 DIVISION M

LESLIE E. KNIGHTEN,

versus

CAVE & MCKAY, ATTORNEYS AT LAW, ET AL., DONALD G. CAVE, JOHN F. McKAY, CRAIG S. WATSON, ET AL.,

MOTION AND ORDER FOR VOLUNTARY DISMISSAL

NOW INTO COURT, through undersigned counsel, comes plaintiff, Leslie E. Knighten, and defendants, Cave & McKay, Attorneys at Law, et al., Donald G. Cave, John F. McKay, Craig S. Watson, et al., and upon suggestion to the Court that the plaintiff desires at this time to voluntarily dismiss, without prejudice, all claims as to the name defendants in the above captioned matter.

Considering the Foregoing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that all claims, demands and cause of action of plaintiff against Cave & McKay, Attorneys at Law, et al., Donald G. Cave, John F. McKay, Craig S. Watson, et al., be and they are hereby dismissed, without prejudice, with each party to bear its own cost.

BATON ROUGE, Louisiana, "s\6th" day of "s\ July", 1989.

"s\Joseph F. Keogh"
JUDGE, 19TH JUDICIAL DISTRICT COURT

APPROVED BY:

"s\Leslie E. Knighten"
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FIRST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment of indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee. (As amended Apr. 28, 1993, eff. Aug. 1, 1983; Mar.2, 1987, eff. Aug. 1, 1987.) of the laws;"

SEVENTH AMENDMENT

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

TITLE 42 SECTION 1981

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

TITLE 42 SECTION 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress. For the purpose of this section, any act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(2) "; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the rights of any person, or class of persons, to the equal protection of the laws;"

RULE 11

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the party's pleading, motion, or other paper and state the party's address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by the signer that the signer has read the pleading, motion, or other

paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the